

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**Before the Honorable Kirtan Khalsa  
United States Magistrate Judge**

**Clerk's Minutes**

*Martinez v. Board of County Commissioners for Rio Arriba County*  
Civ. No. 14-761 JCH/KK

November 18, 2014 at 9:30 a.m.

**PLAINTIFF'S ATTORNEY PRESENT:**      **Antonio Juan Salazar, telephonically**

**DEFENDANT'S ATTORNEY PRESENT:**      **Robert Becker, in person**

**TYPE OF PROCEEDING:**      Rule 16 Initial Scheduling Conference  
Total Time - 20 minutes

**CLERK'S MINUTES:**

- The Court asked counsel to address whether this Court has subject matter jurisdiction over the case, given that Plaintiff does not appear to have alleged that she exhausted her administrative remedies under the Americans with Disabilities Act ("ADA").
- Mr. Becker stated that he removed the case because Plaintiff raised the ADA in her response to a motion for summary judgment he filed in state court. Mr. Becker stated his belief that Plaintiff cannot state a claim under the ADA because she failed to exhaust administrative remedies.
- Mr. Salazar stated that Plaintiff has asserted only state law claims and is not asserting a claim under the ADA. Mr. Salazar stated his belief that there is no federal jurisdiction over Plaintiff's claims. The Court asked Mr. Salazar whether Plaintiff exhausted her administrative remedies under the ADA. Mr. Salazar indicated that she did not.
- Mr. Becker stated that before removing the case to federal court he asked Mr. Salazar if Plaintiff intended to assert an ADA claim, but that Mr. Salazar did not respond to his inquiry. Mr. Becker asserted that Plaintiff had not timely exhausted her administrative remedies under the ADA and agreed that this jurisdictional prerequisite has not been pled.
- The Court ordered counsel to confer with one another in person or telephonically by November 21, 2014 regarding whether they would agree to stipulate to remand to state court and to bear their own fees and costs regarding removal and remand. If the parties arrive at a stipulation they should submit it to the Court. If the parties do not arrive at a stipulation, Plaintiff should file a brief addressing whether this Court has jurisdiction over Plaintiff's claims and whether the parties should bear their own fees and costs regarding removal and remand by December 12, 2014. Defendant should file a responsive brief no later than two (2) business days after Plaintiff's brief is filed.

- The Court will defer issuing a scheduling order until the jurisdictional issue is resolved.